



City of Rockville

## MEMORANDUM

December 11, 2003

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Recommendation on Text Amendment Application TXT2003-00202, Adequate Public Facilities, Mayor and Council, applicants; Recommendation on proposed Adequate Public Facilities standards.

At its meeting of December 10, 2003 the Planning Commission reviewed the above referenced text amendment and proposed Adequate Public Facilities standards to implement the text amendment. The Planning Commission voted 7-0 to forward a negative recommendation to the Mayor and Council on both items.

The Commission is troubled by the Adequate Public Facilities standards as proposed in the staff recommendation. While a majority of the Commission supports the APFO concept, the details of how the ordinance would be administered raise serious concerns about the City tying its own hands when considering new development or redevelopment.

The Commission heard from several spokespeople who continued to raise concerns regarding the proposed regulations. Some raised the issue of regulating previously-approved projects. In general, they contend that the approvals are essentially contracts, and the any modifications could be construed as a breach of those contracts. Others noted that the rigid nature of the regulations as proposed would adversely affect sites in the City that might deserve to move forward in order to advance other City priorities.

Commissioner Hilton is concerned about how to address the previously-approved developments in view of the potential legal issues involved. He also would like to see further information on how the Comprehensive Transportation Review (CTR) will be tied into the APFO process. He is also concerned about having a test for public schools when the City has no control over them. He is concerned that the difference between the County's schools test and the City's test will hurt the City. Although he believed that the time limits on previously approved special development procedures are reasonable he is concerned that the City previously agreed to no further restrictions.

Commissioner Ostell strongly supports the APFO concept, but shares Commissioner Hilton's concerns regarding the schools test. She notes the legal concerns regarding the regulation of the approved projects, but feels that the time frame proposed is reasonable in the context of the future of the City. She does have a concern that there are not exception provisions to address unique circumstances such as the proposed annexation of the WINX property. She stated that there should be some give-and-take for exceptionally beneficial projects but that there needs to be strict criteria. There should also be some added flexibility in the transportation test since the proposed CTR is still a work in progress.

Commissioner Johnson also supports the concept of an APFO, but believes that as drafted there will be too many competing interests pressuring for waivers or exceptions. While generally against waivers, he found the requests compelling. He doesn't support a test for schools, as he believes it could hurt the City with no real mitigation possible. There definitely needs to be a queue list established to properly administer the process. He is generally supportive of the program if the schools test is deleted.

Commissioner Mullican recommends eliminating the schools test for the same reasons noted previously. She also expresses concern about the message this proposal sends about doing business with the City. The process should be slowed down and re-examined in more detail.

Commissioner Britton concurs on the need for greater public dialog before this goes forward. The CTR seems to be an excellent mechanism. The tests for water, sewer and fire protection are really "no-brainers" that we already do. He cannot support the proposal in its current format. The schools test should be excluded, and there needs to be flexibility to allow exceptions for historic preservation, neighborhood enhancement, and previously-approved projects. However, the time frames proposed for the PDP's and CPD's do seem reasonable.

Commissioner Holtz concurs with Commissioner Britton. He is concerned about using hard criteria for the APFO test, even though many of the input numbers themselves are "soft". With schools, the student numbers change from day to day. For the approved development projects, the time frames proposed may be reasonable, but it sends the wrong message. The City shouldn't be changing its mind. Finally, there needs to be added flexibility with regard to sites such as WINX and Chestnut Lodge. We don't need the APFO to be an on-off switch; we need it to be a "dimmer switch".

Commissioner Metzger supported the comments of Commissioners Britton, Holtz, and Johnson. As proposed, we may not have the flexibility we want and need to allow good projects to go forward. She can't understand why we need an APFO; the Mayor and Council already have the power and ability to get what the City needs when approving development. The APFO really ties the hands of the Mayor and Council and the Planning Commission and will limit our ability to achieve the City's goals.

Therefore, on a motion by Commissioner Britton, seconded by Commissioner Hilton, the Planning Commission unanimously recommends against the Adequate Public Facilities program as currently proposed. The Commission also suggests that the Mayor and Council review the video of the December 10, 2003 Planning Commission meeting to directly hear the concerns of the Commissioners.